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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,069	08/26/2003	Willfred Allen Schlicker		5831

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PO BOX 333
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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/650,069

Applicant(s)

SCHLICHER, WILLFRED ALLEN

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Specification

The amendment filed 21 January 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: (1) the paragraph on page 6, beginning at line 19, because the “spacers” were not referenced in the original specification. (2) the paragraph on page 8, beginning at line 18, because the “spacers” were not referenced in the original specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the original specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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In claim 2, line 21, the limitation of “plurality of spacers” was not disclosed, i.e., no description, in the original specification.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters, numerals, that were added throughout the amended specification received 24 January 2005 are missing in the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over Powell (US 6,219,967 B1) in view of Dunbar et al. (Des. 256,110).

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As to claim 2, Powell discloses a planter of which all parts are cut from the same single stone (from “can be made from natural rocks and boulders” of col. 4 lines 38-39), thereby maintaining the exterior surface and outward appearance of the original natural stone, the planter comprising an upper plant receptacle (12 of Figs. 1 and 3) comprising at least one plant holding cavity having a drain hole (20 of Fig. 3) drilled through the bottom thereof and an indentation that encircles the drainage hole (24 of Fig. 3 in that this indentation while not part of element 3 is considered to be an indentation that encircles the drainage hole); and, a base (22 of Fig. 3) having a depression (region around 24 of Fig. 3) cut into the center of the upper planar surface for holding excess drained water, the depression not reaching the outermost edges of the base (shown in Fig. 3; for clarification, the phrase “but which depression does not cup the bottom of the plant receptacle or reach to the outermost edge of the base” is taken to mean that the depression must meet one or the other of these two limitations). Not disclosed is the planter cut from the same single stone and a plurality of spacers on the upper surface of the base. Dunbar et al., however, discloses a planter with an upper plant receptacle and a base made from the same material (see title and Figs. 1-4). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the planter of Powell by making from one material as disclosed by Dunbar et al., which with Powell’s planter the material would be stone, so as to create symmetry between the receptacle and the base so as to increase aesthetic appeal (see Fig. 4 for symmetrical lines between the receptacle and base) and to add spacers so as to allow more air flow so as to reduce the possibility of root rot or algae build-up.

Response to Arguments

Applicant's arguments filed 21 September 2004 have been fully considered but they are not persuasive. Applicant's argument are: (1) the planter is from a single stone (bottom of 1st page); (2) the integrity of the stone's form and appearance are retained (bottom of 1st page); (3) the upper planter (receptacle) is elevated above the base so as to create air flow (bottom of 1st page); and, (4) water directing device located on the bottom of the upper planter - a indentation or protrusion (bottom of 1st page).

As to argument (1), Powell discloses a planter with an upper planter (receptacle) made of stone and a base. Dunbar et al. discloses a planter, with receptacle and base, fashioned from one material. Using the teaching of Dunbar et al., then, it would be obvious to modify Powell's planter with a saucer by making from one material. JP11-32592 discloses a two-part planter with one textural surface by making both from rock (see abstract in English, Examiner considers the term "stones" to be a misprint for --stones--). An obvious modification of the planter of Powell would be to make its saucer from stone.

As to argument (2), any planter made of stone would retain the stones appearance. The form of the stone in Powell appears to be natural.

As to argument (3), Powell in Figs. 3 shows a space between the base and the receptacle so the receptacle is elevated. This space, elevation, would allow air flow.

As to claim (4), Powell discloses a slight indentation in the base at 24 of Fig. 3. This indentation performs the same function as the indentation claimed by Applicant. Examiner considers it obvious to have a indentation or protrusion on either the bottom surface of the

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receptacle or the top surface of the base since the location of this element is not critical to its function.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Damien disclose in the prior art a stone planter. Collie ('109), Collie ('108), Dickinson et al., Stein, Dziewulski, and Morita disclose in the prior art various planters with matching saucers.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

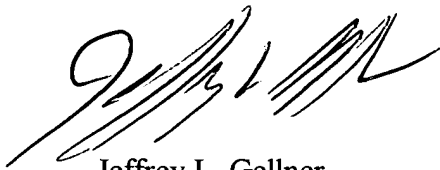
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 571.272.6887. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 571.272.6891. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. Gellner', with a stylized, cursive script.

Jeffrey L. Gellner

Primary Examiner